IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1889.

THE ATLANTIC AND PACIFIC RAILROAD COMPANY

vs.

J. T. LESEUR,
Treasurer of Apache County, Arizona.

No. 1512.

Petition by the Appellee to Advance the Hearing of this Appeal.

This is a Revenue case. July 26, 1866 Congress chartered the Appellant's company (See 14 U. S. Statutes, at page 292). By this charter leave was granted to certain persons to organize under the name of "The Atlantic and Pacific Railroad Company" a railroad corporation to build a railway from Springfield Missouri westward to the head waters of the Colorado river. The corporation was organized and the road built in part: The Western Division runs, from Albuquerque New Mexico to Mohave California, a distance of about 800 miles extending in round numbers through New Mexico, 200; through Arizona, 400 miles; and the remainder of the way through California.

Sec. 2 reads as follows:

SEC. 2. *And be it fur'her enacted*, That the right of way through the public lands be, and the same is hereby, granted to the said Atlantic and Pacific Railroad Company, its successors and assigns, for the construction of a railroad and telegraph as proposed; and the right, power and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber and so forth, for the construction thereof. Said way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary grounds for station buildings, workshops, depots machine shops, switches, side tracks, turn-tables and water stations; and the right of way shall be exempt from taxation within the Territories of the United States. The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act.

The road was completed through Arizona in 1882 and the tax controversy sought to be determined by this appeal arose the next year and is still raging. The railroad claims that the clause: "Said right of way is granted to said railroad to the extent of 100 feet in width on each side of said railroad when it may pass through the public domain including all necessary grounds for station building and shops, depots, machine shops, switches, side tracks, turn tables and water stations; and the right of way shall be exempt from taxation within the limits of the United States," exempts all improvements placed on the right of way.

This right of way has never been taxed in Apache county and I feel safe in saying in no county in Arizona. There are three counties in the Territory through which the road runs. Apache 112 miles, Yavapai 189, and Mohave says in round numbers 100 miles. These counties have

however taxed the improvements put by the railroad upon said right of way and this controversy is about the legality of this tax, the Territorial authorities claiming that Congress has never exempted any thing except its gifts—the right of way and that every thing that has been put upon this right in the way of the shops,tracks,depots,water tanks,coal chutes, etc. has been put there by corporate capital and is taxable the same as any other private property of the same kind.

All the Territorial Courts have taken this view. See the opinion of the Supreme Court of Arizona, a copy of which is published in the transcript papers.

The case appealed from is one of a dozen cases where this question has been made the bone of litigation between the appellant and the local authorities. To show the importance of this question and the necessity of this appeal being advanced and the taxability or non-taxability of the railroad property settled before the next Spring assessment the appellee files with this petition transcripts of various suits where the railroad has resisted the officers and baffled the various counties in the collection of these taxes as well as various affidavits showing that by this litigation the collection and administration of the public revenues are hindered, embarrassed and delayed.

(a) A complaint is filed with the clerk of this court entitled the A. & P. R. R. Co. or C. C. McComas, District Attorney and Perfecto Armijo, Sheriff of Bernalillo county, New Mexico. This is a bill for an injunction sworn to by the applicant's attorney in March, 1884, and asking for an exemption of its entire property claiming that all of its property in New Mexico was by the forgoing act of Congress exempt from taxation.

This refers to the taxes of 1883 and the road was only open for business in 1882.

Of course it is not denied that other causes are assigned for an injunction. But when these causes are examined

they will be found to consist principally of irregularities in the tax assessments.

(2) *The proceedings in Apache county, Arizona,* that being the county in which appellee resides, are more perfectly within the knowledge of your petitioners than those of other counties and of course can be given more in detail. This court will take notice that Arizona contains over 113,000 square miles and has but nine counties. The three northern counties through which the appellants's road runs covers almost the entire north half of the territory and embrace within their limits over 50,000 square miles of territory. It takes three days to journey from the county seat of Apache county to the county seat of its next neighbor, Yavapai county and of course appellee cannot give as full an account of the status of this litigation in Mohave and Yavapai as within its own limits. The point of these exhibits is to show that this is such a public question that there is an imperative demand for its immediate settlement inasmuch as the fiscal operations of the county of the north half of Arizona are embarassed by the delay.

(4) January 5, 1883, the Atlantic & Pacific Railroad Company instituted a suit against Thomas Perez, Sheriff and tax collector of Apache county avering that the railroad was built in 1882 and that in that year the assessor valued said road for taxation at $277,500. That in June, 1882, the Board of Equalization of said county increased said assessment to $550,000 and that $14,430 taxes were levied upon appellant's railroad. The complaint added that the tax collector had advertised the railroad property for sale and ground upon which an injunction was asked was that his property was by act of Congress above set forth exempt from taxation. A copy of this complaint is marked exhibited (b) and is filed with the clerk to be considered with this petition.

(b) This suit was decided against the railroad by the District Court of Apache county and an appeal was taken therefrom by the railroad to the Supreme Court of the Ter-

ritory. Pending this appeal an agreement was entered into between the railroad and the county by the terms of which the railroad agreed to pay upon an assesment of $4,000 per mile for five years, including the taxes of 1883 a copy of this agreement is filed with the clerk of this court to be considered with this petition. A similiar agreement was made at the same time by the railroad with the other two counties, Yavapai and Mohave and was lived up too by the appellent until 1885 In the fall of 1885 the Supreme Court of Montana decided in Carland vs. the Northern Pacific R. R. Company that the above clause in the charter of the Union Pacific Railroad Company exempted from taxation all the improvements placed upon the right of way. According in 1886 we find the appellants repudating its agreement above set forth in exhibit (c) and again bringing suit to compel an exemption of its property from taxation as the Montana Courts had done.

(c) This gives rise to the case of the Atlantic and Pacific Railroad Company as Baca, Treasurer and tax collector of Apache county. A copy of the complaint in which marked exhibit (d) is filed with the clerk of this court with this petition to be read upon hearing of this motion. In this bill for injunction the same allegations are repeated viz.: the levy by the authorities of Apache county of taxes for 1885 amounting to $11,200 upon its property valued at $4,000 per mile and the non liability of the same to taxation owing to the afore said act of Congress. Prayer for injunction. A preliminary injunction was granted by a master in Chauncey. The county joined issue with the railroad and a trial was had in the District Court and judgment rendered in favor of the county. A copy of this decision giving the findings of the court upon the facts connected with the $4,000 above set forth contract and its attempted repudation by appellants is filed with the clerk marked exhibit (e) and will be read upon the hearing of this petition.

(d) The next year 1887, the railroad filed another bill

for injunction asking that the taxes for 1886 be enjoined for the same reason. This case was decided against the appellent and constitues the record now on file in the Supreme Court of the United States and the hearing which it is now sought to be advanced.

Meantime the revenue law of the territory changed. By the Revised statutes of Arizona of 1887 a territorial board of equalization had been established to which the assessment of all railroad property was referred. Also by a revenue statue substantially copied from Illinois, all taxes after that date were to be collected if delinquent by the judgment of the District court from which judgment rendered upon a newspaper notice any aggrieved tax payer having first appeared in court with his complaint was allowed an appeal to the supreme court of the territory. This year (1887) we find the appellant promptly on hand in the District court urging this same exemption. Also in the territorial board of equalization making the same demand. In both tribunals this claim was disallowed. A copy of the appellants petition to the territorial board is found on page 10 of exhibit [....] from Yavapai county.

The first session of the District court of Apache county after the tax delinquency of 1887 was held in April 1888. At that term the appellant appeared and again raised the question among others of its exemption from any taxation growing out of this act of Congress. This claim was again decided against appellants and an appeal was taken to the Supreme Court of the territory. See exhibit (f) filed with the clerk of this court and made part of this petition. In this appeal the appellant prevailed growing out of a technicality. The judgment was rendered at a special instead of a regular term of the District court. See copy of the decision set forth in exhibit (g). Next we file with the clerk of this court a certified copy of the case of the Territory of Arizona vs the tax payers of Apache county marked exhibit (h). This was a suit to collect the delinquent taxes of 1888 and was commenced on the 29th day of June 1889. The

appellant appeared in the District court and as appears by their answer again set up their pretended exemption by reason of this act of Congress. The court overruled the claim and appellants filed their bill of exceptions and prayed an appeal to the Supreme Court of the territory. See the aforesaid exhibit (h).

Up to this date the record upon appeal has not yet been filed but no doubt it will be within the year allowed by law. A copy of these proceedings are filed with the clerk of this court marked exhibit (h).

Pausing here we remark that the forgoing exhibits and facts show that since the opening of the appellant's railroads for business in 1882, each and every year this exemption has been urged as a defense to the payment of its taxes by the appellant in all possible ways and it was used so effectually that for three years the appellee was cheated out of over $20,000 revenue by its adopting of the $4,000 per mile contract.

These papers are filed to show not only is this a revenue case growing out of an act of Congress but one that has been urged in defiance of the several judgments of the Arizona Courts made over and over again and that it is of the utmost importance to the Territory and local authorities that the question be settled by the judgment of this Court at the earliest proper moment. The following are the amount of taxes levied and controverted in Apache county alone.

Assessment.		
$555,000	1883 paid	$14.439 00
448,000	1884 paid	11,200 00
448,000	1885 paid	11,262 00
1,757,200	1886	52,638 15
784,000	1887	24,648 59
812,329	1888	26,520 78
Total taxes		$139,637 44

Of these taxes the second and third items, both as

to tax and assessment of taxes represent 50 cents on the dollar of the actual amount due the county and which difference the R. R. avoided paying through the claim that their property was exempt from taxation under the above act of Congress.

Dissregarding items one, two and three it will be seen that there is to-day due and owing Apache county by the Appellant in taxes depending upon the decision of this case.

1886	$52,638 17
1887	25,648 49
1888	25,520 78
Total	$102,777 44
Assuming that the tax of 1889 to be equal to that of 1888 we add to the above	$25,520,79
Total	128,298 22

And we now bring to the notice of this Court that in the single County of Apache the Appellant has instituted three injunction suits and resisted in Court tax judgments according to the new revenue system of 1887, in 1887 and 1888, in both of the former appeals was taken to the Supreme Court of Arizona, to say nothing about the various contests in the territorial bonds of equalization for 1887, 1888 and 1889. I say appeals were taken, for I treat the recitals in the papers filed in exhibit (h) as tantamount to an appeal. The bill of exceptions is filed and the appeal prayed and granted. Nothing remains except the clerical act of filing the appeal bond and transcript.

The exhibits filed herewith from *Mohave County* show that the Appellants have been equally persistent in fighting their taxes in that county and that while they are not parties to this appeal, yet it is a public question in which they are equally interested with the citizens of Apache county.

The following is a brief resume of the litigation in Mohave county.

I.

In July, 1883, the first year for which the A. & P. R. R. Co. was liable to taxation, we find them petitioning the County Board of Supervisors for an exemption from all taxations claiming such to be the effect of the act of Congress of July 27th, 1886.

See exhibit No. 1. Mohave series.

II.

A similar contract was entered into between the R. R. and the Board of Mohave Supervisors as in Apache county, viz.: that for five years the R. R. shall be taxed only $4,000 per mile. In this contract it appears that the taxes assessed against the R. R. for 1883 were compromised at $14,124, about 50 per cent. of the amount.

See exhibit No. 2, Mohave Co. series.

It appears from exhibit 3, Mohave county series that the R. R. assessment for 1885 was in Mohave Co.:

Real estate	$1,161,699
Personal	174,470
Total	$1,336,169

In 1888 we find the R. R. again asserting to the Board that none of its property was liable because of the effect of the aforesaid act of Congress.

It appears however that the taxes of this year were compromised and paid upon the basis of a $4,000 per mile assessment.

See exhibit No. 3, Mohave series.

IV.

In 1886 it appears in exhibit No. 4 that the assesssors valued the 110 miles of appellant's railroad in Mohave county at $4,166 per mile when the Board of Supervisors raised the same to $6,000 per mile. Thereupon the R. R by their attorney filed their protest before the Board of Supervisors which protest is exhibit No. 4 of the Mohave Co.

series. The appellant in the fall of 1885 met with a change of heart owing to the Montana decisions of Carland vs. the Northern Pacific R. R. Co., and refused to pay anything and repudiated the $4,000 per mile contract. At the same time with the Apache injunction case against Baca the appellant obtained a similar injunction against the tax officers of Mohave county. It was argued and submited at the same term of court and before the same judge as the Baca case, but before its decision a compromise was entered into and the suit was dropped. See affidavit of Mr. Baldwin.

In 1887 the revenue laws of Arizona were changed as above indicated so that all taxes were collected by the judgment of the District Courts, from which judgment an appea was given to the Territorial Supreme Court.

Exhibit No. 5 Mohave county series show that for the taxes of 1887, when the Territory filed under the revenue laws of Arizona its petition for judgment against the delinquent tax-payers of Mohave county, the appellant was delinquent $35,163.07. The appellant filed its claim for exemption under the aforesaid act of Congress among other causes and the District Court disallowed the claim. The railroad appealed to the Supreme Court of the Territory when the judgment of the Court below disallowing such claim was affirmed. See exhibit No. 6 Mohave series.

In 1888 the appellant again failed to pay their taxes upon their property. The amount was $30,171.24. The Territory again brought suit under the revenue law of 1887 in the District Court. See exhibit No. 7 Mohave county series.

Again we find the appelant, exhibit No. 7, filing this identical plea which the Court held no defense and rendered full judgment against them. From this no doubt there is now an appeal pending in the Supreme Court, although I am not provided with the necessary evidence to prove it.

In 1888 the appellant appears before the Supervisors

of Mohave county and seek to compromise the tax of 1887, $33,515.07, at the rate of $3,500 assessment per mile. Considering that the Supreme Court of Arizona had affirmed this judgment as to over $28,000, this offer to "pay the taxes [at that rate] forthwith" the action of the Board of Supervisors declining the proposition is not to be wondered at.

So that from these exhibits the railroad owes Mohave county something like $60,000 delinquent taxes for 1887 and 1888 to say nothing of the amount of taxes of 1889, which become delinquent Dec. 15, 1889, and which I estimate the same as 1888, viz.: $30,000. Total $90,000.

In Yavapai county, whose county seat is Prescott—also the Capital of the Territory until last January, when it was moved to Phœnix—the appellant has usually compromised its taxes. However, in 1887, according to exhibit (x), the Territory was compelled to sue for the delinquent taxes assessed against the appellant. The railroad [illegible] District Court and filed the same plea of

TERRITORY OF ARIZONA,
COUNTY OF YAVAPAI. } ss

Geo. C. Waddell, being by me first duly sworn, upon his oath deposes and says that he is the Treasurer and ex-officio Tax Collector of said county, that ever since the track of the Atlantic & Pacific Railway Company entered said county, to-wit.: in the year 1883, and continuously each year thereafter to the present time, the said railway company have refused to pay Territorial and county taxes upon its railway property, upon the theory that under its charter said property is exempt from taxation. That upon said theory and under said claim of exemption from taxation said railway company has repeatedly and from year to year litigated the question of its exemption and has only paid such taxes, amounting to about 50 per centum of its assessment, as it from year to year paid upon a compromise with the Board of Supervisors of said county.

GEO. C. WADDELL,
Co. Treas. and ex-off. Tax Col. of Yavapai Co., Ari.

Signed and sworn to before me this 9th day of December, 1889.

SEAL.

WALTER G. BATES,
Notary Public.

this protest see exhibit (z). For a printed copy of this protest and the action of the Board thereon, and a copy of the assessment made by them, see exhibit (h), page ....

In 1888 the same proceedings before the Territorial Board of Equalization were repeated. See exhibit (z).

And so again in 1889. See exhibit (z).

Thus we have brought to the attention of this Court twelve different judicial proceedings where the appellant has litigated this alleged exemption in the collection of the revenues of Arizona, viz.: in Apache county *five* times, thrice by injunction and twice by contest in the District and Supreme Court. See

A. & P. R. R. vs. Perez, tax collector.

A. & P. R. R. vs. Baca, tax collector.

A. & R. R. R. vs. Liseuer, tax collector.

Territory of Arizona vs. Tax Payers of Apache county, 1887.

Territory of Arizona vs. Tax Payers of Apache county, 1888.

IN MOHAVE COUNTY.

In 1883 by proceeding before the Board of Supervisors.

In 1884 by proceeding before the Board of Supervsors.

In 1885 by proceeding before the Board of Supervisors.

In 1886 by an injunction suit in the District Court.

In 1887 Territory of Arizona vs. Delinquent Tax Payers. Suit in the District Court and appeal to the Supreme Court.

In 1888 Territory of Arizona vs. Delinquent Tax Payers by proceedings in the District Court.

IN YAVAPAI.

In 1887 Territory of Arizona vs. Delinquent Tax Payers. Proceedings in the District Court, appeal to the Supreme Court.

We also show that the appellant has thrice litigated this same question before the Territorial Board of Eqalization viz: at each and every term of its existence, 1887, 1888 and 1889. Also once in New Mexico.

See exhibit No. 1 A. & P. R. R. company vs. McComas. In all 16 injunctions, appeals, remonstrances and contests in every county in Arizona through which the appellant's road run and every year regularly since it began business. The amount of its delinquent taxes to the two counties of Apache and Mohave is $217,000. I close this branch of the case with an extract from the pleading filed with the Territorial Board by appellant in 1889. This shows that the appellant is determined to pay no tax and that its contest extends to the entire revenue due the Territory of Arizona and the various counties through which it runs.

II.

I now turn to another branch of this petition and show that the collection of the taxes of the revenue of the Territory of the couny of Apache are hindered and embarrassed by the following affidavits which I print in full, first filing the originals with the Clerk of the Court for the inspection of the appellant's counsel.

At this point will the Court read the following affidavit:

TERRITORY OF ARIZONA } ss
COUNTY OF APACHE. }

Before the undersigned authority, appeared St. George Creaghe, Sheriff of Apache county; and Art. McDonald, under Sheriff of Apache county; and John T. Lesuerur, Probate Judge of Apache county; and Nat Greer, Treasurer of Apache county; and Arthur Ashton, Recorder of Apache county; and James D. Likens, Assessor of Apache county; and Albert F. Banta, District Attorney of Apache county; and R. C. Blassingame, Chairman of the Board of Supervisors of Apache county; and Henry Smith, Supervisor of Apache county; and Prime Coleman, Supervisor of Apache County, each for himself and not for each other, being first duly sworn, deposes and says: That the effect

of the numerous writs of injunctions, appeals, dilatory motions, and the many obstructions resorted to by the Atlantic and Pacific Railway Company, in various territorial courts during the past four years, has been done solely and specifically for the purpose of obstructing and hindering the collection of the revenues of the territory and counties of Arizona; that it is our belief, derived from personal observations in courts, and from personal contact with the representatives of the aforsaid Atlantic and Pacific Railway Company, that the whole and sole aim of said Railway Company, is simply unnecessary delay, thereby hoping to eventually force the county of Apache to accept an injurious compromise offered at divers time to the county of Apache by the said Atlantic and Pacific Railway Company or its legal representatives; that the many delays heretofore obtained by the aforesaid Railway Company, has worked an almost irrepairable injury upon the county of Apache, by depriving said Apache county from the use of its just and equitable taxes, due and payable by said Atlantic and Pacific Railway Company, to the said Apache county.

ST. GEORGE CREAGHE,
Sheriff of Apache county, Arizona.
ART McDONALD,
Under Sheriff of Apache county, Arizona.
J. T. LESUERUR,
Probate Judge of Apache county, Arizona.
NAT. GREER,
Treasurer of Apache county, Aaizona.
ARTHUR ASHTON,
Recorder of Apache county, Arizona.
JAMES D. LIKENS,
Assessor of Apache county, Arizona.
ALBERT F. BANTA,
Dis't Att'y of Apache county, Arizona.
R. C. BLASSINGAME,
Ch'm Bo'd of Sup's of Apache county, Arizona.
HENRY SMITH,
Supervisor of Apache county, Arizona.
P. T. COLEMAN,
Supervisor of Apache county, Arizona.

Submitted and sworn to before me this, the 10th day of October, 1888.

ARTHUR ASHTON,
Clerk of said Court.

TERRITORY OF ARIZONA,
COUNTY OF APACHE } ss

I, Arthur Ashton, Clerk of the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Apache, hereby certify that the persons who have signed the aforegoing affidavit are the acting, qualified officials of said Apache county. Witness my official hand and seal this, the 10th day of October, A. D. 1889.

ARTHUR ASHTON,
Clerk of District Court.

STATE OF KANSAS
RENO COUNTY. } ss

Henry Smith, on oath, swears and says that he is and for eight years last past been a citizen of Apache County, Arizona. That he is now temporarily absent in the State of Kansas and will again return to his home in the aforesaid county, and Territory in a few days; that he is a member of the Board of Supervisors of said county, and has been for nine monts last past, that his business partner, Ernest Tee, was a member of saidBoard for four years preceding his affiant's term, and they being large tax-payers and property holders in said county, the affiant is and has for the last eight years been and now is intimately acquainted with the financial affairs of the county.

He says the colletion of the revene and the administration of the affairs of said county is most seriously and ruinously embarrassed by the delay in the settlement by the courts of the liability of the Atlantic and Pacific Railway Company to taxation growing from their alleged exemption under the terms of their Congressional Chart &c.

The said Railroad Company owe Apache County over $125,000.00 of delinquent taxes, this sum being their assessment for taxes for years 1886, 1887 and 1888, the following in round numbers is an estimate of taxes, to-wit:

1886	$ 52,000 00
1887	38,000 00
1888	37,000 00
Total	$ 127,00 00

The special hardship of this delinquency is that under the Territorial law none of these taxes draw any interest. The Railway has vexatiously obstructed the collection of these taxes,. Every year the county has been confronted

with a vexatious law suit and a dilitory appeal, to the full extent of the law. Now Apache county is a newly settled poor country. Its assessment is small, only about $300,000, all told. The appellants assessment is about one-fourth, or one-fifth of the entire amount. Apache county as appears from the sworn complaint of the appellant is badly in debt. The appellant's attorney, swears it is insolvant and this is probably true, so far as insolvant is applicable to a county.

Affiant says Apache county is in debt $120,000, and upon this debt she is paying interest from 7 to 10 per cent. that all the revenue that can be collected is absorbed in the current expense of the county, that the county under the laws of Arizona is required to protect the appellant's property, viz.: 112 miles of railroad and appliances, worth from $3,000,000 to $6,000,000. Appellant has not since 1885 paid one cent of taxes to Apache county, except as the result of a law suit, either completed or comtemplated. That not only is the collection of the revenues of said county most seriously hindered and delayed by this law suit, and others growing out of the same claim, but the entire fiscal affairs of the county, are similarly delayed and hindered, so much so that the county warrant of Apache county have greatly depreciated in consequence of this appeal and the preceding appeal to the Territorial Supreme Court, and if the hearing of this case, in the United States Supreme Court, is delayed until the case is reached in the regular order, Apache county warrants will not be worth at the end of three years fifty cents on the dollar, all of which loss the county of Apache has to bear on account of the higher rates charged for services and supplies furnished to carry on the county government.

Affiant is familiar with the affairs of Mohave county, and states that a similar state of affairs exist there. The collection of its revenue and administration of its county affairs is similarly hindered and delayed by this litigation. All of which he verily believes to be true.

HENRY SMITH.

Subscribed and sworn to before me this 20th day of November, 1889.

JOHN F. SMITH,
Notary Public.

(SEAL)

Term expires October 9th, 1893.

Affidavit of D. P. Baldwin:

STATE OF INDIANA, } ss
CASS COUDTY, }

D. P. Baldwin, being duly sworn, says that he was present at the June term, 1886, of the District Court of Yavapai county. That he argued at that term for Baca, Treasurer, the right of exemption of the A. & P. R. R. Company from taxation, growing out of the second section of its charter, in which its right of way was exempted by Congress from taxation. That at the same time a similar case to that of the A. & P. R. R. Company vs. Baca, Treasurer of Apache county, was submitted from Mohave county. Affiant does not remember the title of this case. He remembers that afterwards the same was settled between the officials of Mohave county and the A. & P. R. R. Company, and, therefore, the demurrer was never decided.

And further says not.

D. P. BALDWIN,

Subscribed and sworn to December 4th, 1889.

(SEAL) CHARLES E. HALE,
Notary Public.

With the exhibits is also filed the annual report of the appellant for 1884 showing its valuation of its own property in Arizona and the amount per mile which its track and improvements are capitalized:

[Copy of the Petition.]

—IN THE—

SUPREME COURT OF THE UNITED STATES.

The Atlantic & Pacific Railroad Company

vs.

J. T. Lesueur, Treasurer of Apache county, Arizona.

No. 1512.

Appeal From the Supreme Court of Arizona.

The appellee petitions the Court to advance the hearing

and argument of this appeal becauses as appears by the record ot the affidavit and exhibit filed with this petition this is a revenue case and the collection of the revenues of both county and Territory are ruinously embarrassed.

1s. This is a revenue case. It is a suit brought by the railroad to enjoin the collection of over $52,000 of Territorial and county taxes for the year 1887. An injunction was granted on the day of.....1887 and the tax sales which was advertised by the appelle to take place the next week on the ..... day of 1887 was enjoined.

This suit was instituted in the District Court for the trial of cases arising under the constitution and laws of the United States for Yavapai county, Arizona. The appellee appeared and demured to the complaint. Demurer overruled exception. An answer of general and specific denials was filed.

The principal question of the complaint was that the appellant's R. R. was exempt from taxation by virtue of an act of Congress granting appellant's charter and which contains a clause exempting its right of way from taxation. Appellant's right of way tax has never been taxed. The taxing authorities assumed only to tax the equipments placed thereon and the rolling stock. The appellant also raises question as to the situs of its movable property and perhaps also a question as to the taxability of its franchise.

The District Court in a learned opinion denied the injunction. An appeal was immediately taken and filed and supersedeas obtained. The Supreme Court of the Territory affirmed the judgment of the District Court.

From this judgment the appellant appeals to this Court, staying all proceedings to collect the tax by an appeal bond. Thus it will be seen that the collection of revenue of both Territory and county are hindered and delayed.

2nd. But the above is only a partial reason why an immediate hearing of this appeal is prayed for. As appears by the exhibits filed the present record represents only one out of five suits begun in Apache county within the last six years,

each of which involves the same questions, each of which delays and hinders the collection of both county and Territorial revenues, but is also working ruin to the financial affairs of Apache county—the virtual appellant.

Since the appellant opened its railroad it has never paid a cent of tax except as the result of a law suit. It has vexatiously litigated every demand made upon it for its share of the public burdens.

These litigations have forced unjust and illegal compromises which the railroad has endeavored—after once being solemnly made—to repudiate, and were only frustrated by a most righteous judgment of the District Court, a copy of which is filed with this petition.

More: This state of affairs has existed for six years past in every county of the Territory where the appellant's road runs, and will only end with the decision of this Court in this appeal.

The consequences of delay are ruinous. The appellee is in debt and her county warrants daily depreciating. She has barely money enough, wrung from her remaining taxpayers, to keep up her necessary expenses, and pays heavy interest in consequence of this litigation.

For the above reasons we ask that this Court make an order advancing this case—giving it preference as a revenue case, and to set the earliest possible day for the argument.

As a part of this petition the affidavits of Henry Smith and the other county officers are filed and also thirteen separate exhibits, showing the various suits and contests within the last six years in all the counties of Arizona where appellants railroad runs, in which this same question has been litigated.

Respectfully submitted,

T. J. LESEUER,

Treasurer of Apache county, Arizona.

By D. P. Baldwin, his Attorney.

December 2, 1889.

In Conclusion: The appellee relies upon the rules of

this Court governing the advancement of cases: the Statute of June 30th, 1870, in the premises and the following adjudications:

Cummings vs. National Bank, 103 U. S., page 153.
Hoge vs. Richmond R. R. Company, 93 U. S., page 1.
United States vs. Fossatt, 21 Howard, 445.
The Illinois R. R. Tax Cases, 92 U. S., 576.

DANIEL P. BALDWIN,
Attorney for Appellee.

D. TURPIE, of Council.

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Office Supreme Court U. S.
FILED.
JAN 4 1890
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

THE ATLANTIC AND PACIFIC R. R. CO.,
Appellant.
vs.
J. T. LESEUR,
Treas. Apache County, Arizona.
No. 1,215.

Brief in Opposition to Motion to Advance.

I.

The motion papers disclose that other cases involving, in part, similar questions, recently determined in other counties of Arizona, are being brought by appellant to this Court. Its purpose is to *then* move consolidation of all such cases with this, when reached, so that all parties thereto may be heard *as of right*, upon the questions involved, and with greatest saving of time to Court and counsel.

II.

Neither the Territory of Arizona, nor any *other* county therein, asks or seeks present advancement of *this* case.

III.

Present decision of *this* case will advantage Apache county alone. No *general* questions affecting other railroads in or the revenues of the Territory are here involved, which, in any general sense, is embarrassing the operations of the government of that Territory.

Section 949 R. S. gives preference to revenue cases of a State upon the docket of this Court "on showing sufficient reason."

Commenting thereon, this Court, in Hoge *et al. vs.* Richmond, &c., R. R. Co. (93 U. S., p. 1), said:

"The statute is not imperative. It does not provide that all cases in which the execution of the revenue laws of the State is enjoined or stayed, shall have preference over others upon the docket, but only such as, upon a showing, the Court is of the opinion should be heard out of their order. The Court must determine what is 'sufficient reason' for this preference under all the circumstances of the case.

"In the present crowded state of our docket, it is incumbent on us to take care that injustice is not done to 'private parties' by the unnecessary advancement of causes affecting public interests. To that end we now hold that we will not give preference to cases in which the execution of the revenue laws of a State is enjoined, unless it sufficiently appears that the operations of the government of the State will be embarrassed by delay.

"The Illinois Railroad Tax Cases, heard out of their order at the last term, may be referred to for the purpose of illustration. There the question was as to the constitutionality of the law under which all the property of railroad corporations in that State was taxed. The Courts of the State had decided in favor of the validity of the law, and the Circuit Court of the United States against it. They were class cases, and their determination would dispose of many other suits of the same character then pending in the Circuit Court, in which interlocutory injunctions had been allowed. In addition to this, it was shown that the action of the Circuit Court, in granting such injunctions, practically suspended not only 'the enforcement of the revenue laws of Illinois against railroad corporations, but the collection of the taxes assessed upon the capital stock and franchises of all other corporations in the State, except so far as such corporations voluntarily pay such taxes.' Under such circumstances, it is easy to see that questions of

great public interest were involved, and that the operations of the government of the State would be embarrassed so long as they remained undetermined by this Court. Sufficient reason was shown, and the causes were accordingly advanced.

"But here no such circumstances exist. The injunction operates only upon the property of a single corporation. The value of the property, or the amount of the revenue to be derived from it, is not shown. No question affecting the power of the State to tax *other* property is involved. The only dispute is as to the liability of the property of this single owner to taxation. The actual amount in controversy may be, and probably is, much less than that in very many other cases waiting their turn to be heard in the regular call of our docket. No disputed principle of law affecting any other case is, so far as we can discover from the record, presented for our determination."

This motion was denied, although made by the Attorney-General of the State.

IV.

The showing of assessment and taxes paid by appellant in Apache county (Motion, p. 7), discloses such payment in 1883–1884 and 1885; and that assessment and taxes for 1886–1887 and 1888, now resisted, were increased from 100 to 400 per cent. over those of 1883–1884 and 1885. This was accomplished by assessing the appellant's *Federal* franchise at $380,000; its rolling stock at over $500,000; its ties, rails, iron, bridges and culverts upon its right of way; as also its stations, depots, water tanks, dining rooms, &c., located thereon. (See Exhibit C, Appellant's Bill.) Hence, the asserted total of taxes due the county is made up in large part of matters held exempt from such taxation by this Court (*i. e.*, its franchise), or now under advisement in this Court, as counsel understand (*i. e.*, rolling stock), or of doubtful subjection to such taxation (*i. e.*, the material composing its road bed, even including bridges, upon its right of way.)